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THE JURY SYSTEM.

A Constitutional Convention is now sitting in the State of New York to revise the organic law, so far as any alteration, modification, addition or innovation of that instrument may be thought to be necessary by the assembled wisdom of the Commonwealth.

The jury system everywhere is an important factor in the proper administration of justice; but there are improvements which are obviously necessary to be made, and without which it cannot be truly said that proper or entire justice can be done.

In both civil and criminal controversies, the affirmative of the issue has the first and last say to the jury.

In a civil cause, plaintiff makes the first impression upon the minds of the jurors by what is termed the opening speech. Plaintiff makes the last impression upon the minds of the jurors by what is termed the closing argument.

However impossible or how unnecessary it may be to change this form of procedure in civil controversies, the same objection does not apply to criminal prosecutions.

In this County of New York (as elsewhere, I presume) an indictment is procured by an *ex parte* statement before a secret tribunal known as the Grand Jury. It is tried before a petit jury, more or less in sympathy with the prosecution, because, in the majority of cases, their minds have been poisoned against the accused by the public journals. The prosecuting officer of the county, in his opening address to the jury, very often, and not unconscientiously, gives an exaggerated description of the offense committed and of the connection of the accused with the charges

in the indictment; and thus very often makes an impression upon the minds of the jury which all subsequent testimony in favor of the respondent is unable to remove. The prosecuting officer is permitted also to close the discussion upon all the proof, and he has the privilege—a great one, in the majority of cases—of knowing what his adversary's arguments are, of time in which to prepare his answer, and the almost utter impossibility of any successful contradiction of a misstatement of evidence in which he may indulge before the jury.

It seems to me that the present Constitutional Convention should regard this question with great seriousness and endeavor to apply a remedy to an enormous existing evil.

The greatest weight, however, thrown in the scales against the respondent in a criminal prosecution is the too often apparent bias of the presiding judge, who, though however conscientious and fair-minded he may be, seems, in most instances, to be overcome by the terrible atmosphere of guilt which permeates even the temple of justice itself. The result in the administration of the law is that the court descends from its exalted position as judge to the partisan one of public prosecutor.

Jurors, as a rule, look up to a judge with a sort of religion, and if they get an impression that the judge believes in the guilt of the accused, in the majority of instances proof of the clearest character has but little weight with them.

To illustrate this fact, a proposed juror in a homicide case was asked the following question:

"If you, on all the evidence, believe in the innocence of the accused, and still, from the manner, utterances, declarations or charge of the court, you receive the impression that the judge believes in the guilt of the respondent, would you follow your own conviction of the testimony, or would you be guided by those impressions that you received of the belief of the Court in regard to the guilt or innocence of the accused?" "Why," said the proposed juror (in other respects a very intelligent man) "I would certainly follow the court. Does not the court know more than the jury can know whether the man is guilty or not?"

I believe that no judge should be permitted, either in a civil or criminal cause, to convey an impression to the jury as to his personal belief; that the functions of a judge should be confined to the ruling upon the questions raised before him by the advocates engaged in the trial and the charge to the jury in reference to the law which governs the case before him.

By a cruel law in this State, litigants, who may suffer defeat

in the Special or Trial Terms of the courts in this city, although entitled under the organic law to an appeal to a higher tribunal, cannot perfect that appeal, unless the litigant is able to pay the stenographer for the notes of the trial, and the printer for printing the case on appeal and the points of the appellant. In very many instances, this operates as a substantial denial of justice, and the result is that the *forum* seems only open to the rich, and its gate to be barred against the poor.

I remember a case which illustrates very conspicuously the hardship to which I have referred.

I tried a case before a very learned judge at *nisi prius*, and after all the testimony was in, on motion of the counsel for the defendant, the judge who presided at the trial dismissed the complaint of the plaintiff. I was quite sure this action of the court was error, and fought strenuously for the right to go to the jury upon certain issues which were presented by the pleadings. The court, as I have stated, however granted the motion of the other side, and great was my joy and hope on repairing to my office, I found that the very question which had been passed upon by the trial judge had been decided by the Court of Appeals in my favor. Of course, I had no doubt of reversing the decision of the court below; but, on application to my client, I discovered that he was unable to raise the money to prosecute his appeal, or to pay the printer for printing the case on appeal, and the consequences are that he, who, in right and justice, was and is entitled to an immense estate, is deprived by existing law of his constitutional right of appeal from an erroneous decision, and is substantially despoiled of his rights by the hand of the law in her chosen temple.

By law, the official stenographers of the courts of this city, not only receive a generous salary, but they are entitled to charge, or claim to be entitled to charge, under the law, so much per folio for each and every copy of the minutes furnished to counsel of the trial which has been had.

Of course, no appeal can be perfected by the appellant, unless he has the stenographer's notes as the basis on which to construct his proposed case on appeal. In the absence of a proposed case on appeal as settled by the judge who tried the same, an appeal can only be heard upon the judgment roll in a case, and that, as a rule, does not present points, causes or reasons for reversal.

This matter of the stenographer's notes is a cancer which eats into the vitals of justice, and it seems to me that the Constitutional Convention should listen somewhat to the prayers, to the

supplications of those whose rights have been crucified by the barbarous law to which I have called attention.

I do not wish to be understood as finding fault with stenographers as a class. With some conspicuous exceptions, they are an honorable, high-minded body of men, many of them possessing well-trained intellects amply stored with general information. Many a lawyer has found, to his grief and mortification, that the stenographer's notes did not contain the specific objections which he was confident that he had made to the introduction or the exclusion of testimony, or the rulings or the charge of the Court upon the trial, and furthermore, what was vital to the appeal, the exceptions based upon the objections were, so far as the record was concerned, entirely absent as though they had never been made. It is quite possible that, in the majority of these instances, the stenographer had not heard the exceptions taken or the objections made; but, nevertheless, the calamity to the appealing litigant was the same. The law could correct this abuse by providing that one objection and exception should be sufficient in relation to the same identical question or principle presented, or kindred ones. As the law now stands, the fate of the most important controversy may be determined by the action of the stenographer. There is no body of men in the world whose power for harm is so great, and it redounds much to their credit that the occasions on which that power is abused are comparatively infrequent. The general rule in civil controversies is that the appellant must show that he has made objection and taken exception to the introduction or exclusion of proof on which he relies. In criminal prosecutions, however, by the comprehensive and liberal spirit of the penal code, it is provided that after hearing the appeal, the court must give judgment without regard to technical errors or defects or to exceptions which do not affect the substantial rights of the parties; and still, in a very recent criminal case, the Court of Appeals refused a reversal on the ground that the introduction of sundry letters in proof (which was objected to, on the ground that they were incompetent and immaterial and irrelevant) were not objected to, so far as the record disclosed; on the ground that they were not contradictory of an oral statement made by the writer on the stand, when the case on appeal disclosed that that objection had been made in relation to one or more of the letters of like character. And then again, the Court of Appeals and General Term of the Supreme Court, in most of the judicial departments of the State, have gone so far in criminal causes, capital and other, that

where, upon the whole record, it appeared that substantial injustice had been done, although no specific objection had been made or exception taken, to matter amenable to censure, they have reversed the judgment below in cases of conviction, and ordered a new trial. Mr. Justice O'Brien, of the General Term of the Supreme Court of the first department, in a very recent case, writing the opinion of that august body, reversed the judgment of conviction below, because it was apparent that it was an unjust one. The judicial construction of the section of the penal code referred to does not yet seem to have been fixed or settled by the positive, the final adjudication of the highest court in the State.

I presume most lawyers will agree with me that the trinity of legal difficulty is represented by the effort to establish a pedigree, upset a title, or to break a will, and still, all these things have been accomplished in this country by our profession, and will, undoubtedly, be achieved by the younger generation which is to follow us—possibly, by many students of the Yale Law School, who may read this paper. The most common way, at the present day, of breaking a will in cases where the decedent left real property, of upsetting a title to real estate, of establishing a pedigree, is to bring an action in ejectment. These actions are tried before a jury, and they are so important in their character that every care should be taken in preparing for trial, and every honorable manly effort should be made to wrest a verdict from the jurors. It is remarkable what little things very often shape and mould the destinies of a trial at circuit. I remember in the Anderson case that I was saved from utter destruction by the action of defendant's counsel, who supplied me, and for the use of my client, the only evidence of undue influence which appeared in the case; and it was on that question of undue influence that the jury found a verdict in favor of my client, the plaintiff, and the will was broken. Had not the defendant's counsel called a single witness, he would have overthrown me. Had he confined himself to the field of my operations, my defeat would have been certain, because it was impossible to show that the decedent was a person of unsound mind and did not possess testamentary capacity. On the contrary, the record bristled with the proof that he was a man of marvellous business tact, sagacity and prudence, and but for the fatal error of defendant's counsel, I could not have gained that signal legal victory, which the profession have been pleased to call phenomenal. Therefore, in the light of the result of that case, let all students at law ponder well the advice of David Paul Brown—"Never attempt too much." More causes

have been lost by cross-examination, and by an attempt to prove too much, or to overprove the cause, as lawyers term it, than for any other reason.

In the Lane will case, the verdict was carried by a very simple incident. I was opposed by a very strong bar, headed by Franklin Bartlett, an accomplished advocate, and I realized towards the close of the battle that upon the proof, the day was going badly, and I was extremely anxious to make a diversion, if possible, in favor of my clients, two little children, one the daughter and the other the son of Richard Henry Lane, who was one of the heirs at law of the decedent. Probably, no saner man ever appeared on this planet than Maltby G. Lane, and what was more, that fact was proven by the testimony of the first citizens of New York, lawyers, bankers, business-men and divines. I instinctively felt that the jury, faithful to their oaths, could not disregard the enormous mass of testimony which had been piled up by the defense to demonstrate the testamentary capacity of the deceased. On the morning of the day fixed for the summing up of counsel, just as I was about to begin my address to the jury in behalf of the contestant, little Harry Lane, a child about four years of age, sitting by his mother, at my side, exclaimed: "Oh, mamma, mamma, I am so hungry." It appears that the mother, in her haste to be at the court in time to hear the arguments, had hurried from her home and had neglected to give the little boy his breakfast; but with those words, "Oh, mamma, mamma, I am so hungry," ringing in my ears, I accepted them as a text for my discourse to the jury, and predicting to them the future of these two lovely, unfortunate children, despoiled by an unjust will of their interest in their grandfather's estate, carried the verdict in their favor, the jury having been out but three minutes.

Another perhaps more remarkable case was that of an extraordinary adventurer, who called himself Fitz Charles McCarthy. He was tried for having, in connection with the son of Pet Halstead of New Jersey and others, conspired to rob, and with having successfully robbed the representative of Mrs. Lynch, the noted diamond merchant, of a large amount of diamonds supposed to be worth in the neighborhood of $20,000. Fitz Charles McCarthy was born in Galveston, Texas, of a respectable family, strikingly handsome in his appearance, about six feet and one inch in stature, cast in an athletic mould, with the feet and hands of a woman. When robed in his fur-coat, he did not look unlike the pictures of Prince Murat, which one sees in the Dresden and other galleries of Europe. He was put upon his trial and went upon

the witness-stand to testify in his own behalf. He imagined that if he stated to the jury that he was one of the honorable order of Masons, that it would be a point in his favor. He disregarded the fact, however, that the majority of the jury who tried him were Irish Roman Catholics, with no decided leaning in favor of the masonic sentiments. I, therefore, feared greatly the result, and almost instinctively realized when he came off the stand that his cause was lost; but, I thought I would make one last effort to redeem the day, and in addressing the jury, I spoke of McCarthy as follows: I said, "Gentlemen of the Jury: Behold this man; he is no felon; he is no thief; in his veins runs the rich blood of princes and of kings. You all remember in that most impartial of English histories, that of Lord Macaulay, the description of the disastrous day of Landen, most disastrous to England, but most glorious to France, where the Sarsfields and the McCarthy's broke forever the British boast of invincibility with the bayonet." The result of this allusion was electrical, and was positive and beneficial. The jury retired and acquitted McCarthy, with nine cheers, and the majority of the panel were about to assault a German upon the jury, who hesitated in giving a verdict of acquittal upon such damaging evidence as appeared against the accused. McCarthy was discharged, and his after career was one of romance and interest.

Many years ago, I was trying a case at Newark, N. J., and was opposed by Cortlandt Parker, a leader of the bar of that State. I proved, as I thought a very strong case, but the jury disagreed, standing, as I was informed, eleven for my client, and one for the defendant. This one juror was requested to give the reason of his decision. He replied that during some argument in the progress of the trial he had seen me, in addressing the court, pretend to read from some paper which I held in my hand, and he glancing at the paper, saw that nothing was written upon it, and he had made up his mind that I was trying to mislead the court in some manner, and, therefore, decided against me in the jury-room. In point of fact, the incident was a very trifling one. In speaking to the court, I had probably instinctively grasped up an unwritten piece of paper, as lawyers very frequently in speaking pick up anything within reach, sometimes to emphasize, sometimes to illustrate and sometimes without any particular motive.

The late James W. Girard, one of the ablest and most accomplished advocates who ever graced the New York bar, used to tell a story something as follows:

He was trying a case in Westchester County. He had put in

his proof, the defendant had submitted his evidence, the arguments of counsel had been made, the charge of the court had been delivered, and the jury directed to retire for consultation and a decision. Mr. Girard expected a verdict in a very short time. Hour by hour went by, and the Jury had not returned. Mr. Girard at last said to the Sheriff: "Mr. Sheriff, what is the matter with those men?" "Well, I'll tell you, Mr. Girard," replied the sheriff, "there is a man on that jury who says he will never find for the plaintiff, because he wears a gold-headed cane." "Go back," says Girard, "and tell him it is brass."

The sheriff went back with the message, and Girard, according to his own version of the affair, got a verdict in five minutes.

Now, whether this story is true or not, it illustrates the impression that a very great lawyer had of the susceptibilities of the jury, and a proper way to play upon them. Let no man think he can try a case properly which has not been carefully prepared, either by himself or by another. He should know his witnesses, their peculiar characteristics, what they really know about the case, and by a series of severe examinations, both direct and cross, he ought to have some idea, at least, how the witness will behave under fire.

In trying a case, either at Circuit or at Special Term, a lawyer should, in all instances, have a copy of the stenographer's minutes made daily, where the means of his client will permit this indulgence. There are two other principles in practice which operate very harshly against a poor litigant. One is that by law the notes of a stenographer taken at the trial of a cause or in a judicial hearing are *prima facie* evidence of the truth of what they record, and the other conspicuous hardship is that in order to put himself in a position to correct an erroneous record, the counsel for the party aggrieved must call the attention of the court to the error in the record at the next session of the court which occurs after the error has been committed. One sees at once that this course is not open to the counsel whose client is too poor to pay the fees of the stenographer. One may ask, how can this grave abuse be corrected? Many lawyers suggest that where the court is convinced, upon proper proof before it, of the inability of a litigant to pay the fees of the stenographer, or to print his case, or both, that, in the interest of justice, these expenses should be paid out of the county treasury, and in the event of the success of the appellant against the rich antagonist, why, of course, the costs and disbursements could be taxed against the latter, and on collection returned by the successful party to the county treasury.

Daniel S. Dickinson once said: "If there is anything beyond the fore-knowledge of God, it is what will be the verdict of a petit jury." I regret to say that in the latitude in which I live, the same regard and care for the interest of an accused person are not exhibited as were demonstrated in that celebrated trial in the Commonwealth of Massachusetts recently, in which a young girl was put at the bar to answer the charge of having slain her own father. In that case, in the face of popular clamor, journalistic assaults, and of every influence, social and otherwise, that could possibly be brought to bear upon impressionable minds, what a grand and majestic picture that court which tried that unfortunate girl presented, when it stood so manfully for the law and for its ancient principle, that every person is presumed to be innocent until proven guilty. In the practical operation of the law in this State, a person is presumed guilty until he establishes his innocence. Originally the doctrine was that no person could serve as a juror who had formed or expressed an opinion upon the subject matter of indictment or the *personnel* of a cause. Our Court of Appeals has ruled that notwithstanding the fact that the juror admits that he has formed and expressed an opinion, which it will require great evidence to remove, that such a juror is competent to sit in the panel, if he can, as matter of opinion, declare tha the is able, notwithstanding the great prejudice which he has avowed, to do justice between the people and the accused. One may say in astonishment, how is this tremendous miracle performed? The answer is "by the statute." The statute makes a person who is reckless or ignorant enough, under such circumstances, to give the opinion referred to, a competent juror. Jurors, both in civil and criminal controversies, are governed in their final determination, in a great measure, by the charge of the court, and if the court evinces a leaning or a bias on one side or the other, the jury are very apt to follow the indirect direction of the court, and decide in harmony with the views of the judge.

In some Southern States where I have tried causes, the practice is for the court to hear counsel on both sides as to their views of the law, after the proof has been submitted, and to decide what questions the court will submit to the jury and the principles of law governing the cause at issue to be declared to that body. All this is done in the absence of the jury, who are directed to retire for that purpose. I think that system could be adopted in the Northern and Eastern States with great advantage to the administration of substantial justice. Juries and lawyers in the Southern States contrast strongly with juries and lawyers in the North-

ern States. The juries of the South are emotional, impetuous, and at the same time intelligent. The juries of the North are more phlegmatic in their temperament, more analytical in their mental processes, and less liable to be carried away by a mere appeal to passion or prejudice. Lawyers at the South rely more on their natural genius in the trial of a cause than upon preparation. Lawyers of the North make almost painful preparation for the trial of the cause where that is possible.

The recent trial in which Mr. Breckenridge figured as a party litigant recalls to my mind a very remarkable case in which he was one of the counsel who appeared for the Commonwealth of Kentucky, and I had the honor to appear for the respondent. It was the case of Col. Thomas Buford, indicted for the assassination of Chief Justice Elliott of the Court of Appeals of Kentucky. The cause aroused as much excitement in the State of Kentucky as did the trial of Guiteau for the murder of President Garfield in the nation. I shall always believe that I saved the life of Col. Buford by an earnest appeal to the religious sentiments of the jury. A Kentucky juror, more than the juror of any other locality with which I am familiar, is accessible to scriptural and religious influence. In this case, Col. Breckenridge made one of the ablest, most powerful and most eloquent appeals for the prosecution to which I have ever listened. I consider it a model of learning, power, rhetoric and special knowledge. How sad it is that the clouds have begun to gather in the horizon of so glorious a career.

I think it cannot be gainsaid that in New York City we have a legal quartet who really may be said to lead the American bar. The first one whom I shall name is he who lives in the hearts of juries and the people, whose very presence is associated with strength, with amiability, with learning and a sense of justice; that is the President of the Constitutional Convention now sitting, Joseph H. Choate. I have always regarded, take him all in all, Rufus Choate as the greatest lawyer who ever lived in any country or in any age; but, that he would be, if living now, the superior of his kinsman, is a matter of very great doubt in the minds of those who revere them both — one dead, the other living; and still, I think oftentimes it is the prestige, the influence, the character, the consummate tact and art of Joe Choate which accomplishes victory rather than the merits of his cause. Judges listen to him with profound deference, because they know that he is learned and pure. Juries listen to him with delight, because they know that, like Oliver Goldsmith, he has the heart of a man.

Victor Hugo says somewhere, "That the world mounting to the brain of one man produces an unbalance in the order of things." I think in this sentiment he made allusion to the last Cæsar. Mr. Choate, from the qualities I have referred to, has an enormous advantage in the *forum;* but no one is mean or envious enough to grudge him his successes, and all lament his defeats. The last, however, are very infrequent.

James C. Carter is a man of great learning in the law, and his mind has been enriched by wide and varied information. I presume that, without disparagement to any one, he may be justly considered the most formidable man before the court *in banc* that we possess.

The most remarkable man at the bar of his age is Elihu Root. His knowledge of detail is perfect, his industry is enormous, his pertinacity is unconquerable, his devotion and loyalty to his cause and client are unalloyed. On some lines and in some directions, he is one of the ablest men with whom I have ever come in contact.

Of a similar mental calibre, but probably more learned in case law than Mr. Root, is John E. Parsons. Through his consummate tact in the trial of *nisi prius* causes, he has constantly "plucked from the nettle danger the flower safety."

Now that Brady, O'Connor, Ogden Hoffman and Field are no more, the four advocates to whom I have called attention, are probably the brightest and most enduring lights in the legal constellation.

In the management of a complicated case, in the unravelling of supreme difficulties, in the knowledge of the law, in industry, in perseverance and tact, probably Col. George Bliss has no superior in this or any other country.

The City of New York has been much maligned in various ways, but, I think it will be conceded that we possess a judiciary distinguished for learning, true dignity and spotless justice.

In the Supreme Court, in the First Department, we have some remarkable jurists.

Since Mr. Justice Van Brunt has become the presiding Judge of the General Term of this department, the business of that branch of the court has been accelerated with astonishing speed and general accuracy. Before his appointment, the business of the General Term was in arrears, but at the present time, this cannot be said. Chief Justice Van Brunt is distinguished for his energy, hard common sense, logical power, and a profound knowledge of the law. His impartiality has never been denied by the

most critical. If such a man as he had been nominated by the Executive for the place made vacant in the Supreme Court of the United States by the death of Mr. Justice Blatchford, that nomination would have been instantly confirmed, New York would have been represented by a member in that august body, and the Court itself would have acquired a very learned and efficient Judge.

Judge Morgan J. O'Brien, although comparatively a young man, has attracted attention by his quiet, patient, gracious, yet firm demeanor, and the thorough research evinced in his written opinions.

Of Judge Barrett it may be truly said that he is intellectually the peer of any jurist in this country. He possesses somewhat the Italian mind of the first order. He is a classic and *belles lettres* scholar and somewhat of a litterateur.

Judge Lawrence was a leader at the bar, and is regarded as one of the best *nisi prius* judges in this country. The only criticism that I ever heard in reference to this most gallant gentleman was "he is so straight, he leans backward." He reflects lustre upon the bench; he is an ornament to mankind.

Judge Beach is a gentleman of the old school of manners, but is justly esteemed as a very learned and accurate lawyer. His great father, William A. Beach, said to me on one occasion, in speaking of his son, "Miles is a better lawyer than I am." Whether this be true or not, the fact remains that in intellectual capacity, Judge Beach suffers only in comparison with his illustrious father.

Judge Patterson is regarded by the profession as one of the most learned and scholarly men who ever sat on the Supreme Court bench.

Judge Andrews has fulfilled the great promise which he gave at the bar and when he was Corporation Counsel of this City, and his decisions are regarded as able, exhaustive and entirely impartial.

Judge Ingraham, although the youngest man on this bench, is following fast in the footsteps of his distinguished father, whom mentally he strongly resembles. The power of judicial analysis in him seems to be hereditary. He comes from a juridical family on both sides.

In the Court of Common Pleas, Chief Judge Daly is regarded as no unworthy successor of the late Chief Judge Charles P. Daly. No higher praise can be uttered than the statement of this fact.

Judge Pryor has astonished the profession by the clearness

and logical power and the classic style of his opinions. He has been lawyer, statesman, journalist, warrior, he will close his life as a judge. He has more than satisfied the high expectations entertained of him before his elevation to the bench.

Judge Bookstaver was for many years connected with one of the leading law-firms of this city, and probably has had more experience in the actual practice of the law than the majority of judges now upon the bench. Upon a question of practice, his views are esteemed almost infallible.

Judges Giegerich and Bishoff are, as their names indicate, of German origin, and they are demonstrating in no uncertain way that they are worthy of sitting in the exalted court in which they preside and of their learned and able associates.

In the Superior Court, once presided over by the great Chief Justice Oakley, we have judges who reflect the highest credit upon the administration of the law in this city.

Chief Justice John Sedgwick, for many years one of the leading lawyers at the bar, is its presiding officer. He is a man of very great learning, very gracious and amiable in his manners, and is beloved by the profession.

Judge Friedman is what in this country is termed a "self-made man." He is German by extraction, and while studying his profession in the office of ex-Recorder Smith, he earned his livelihood by attending to outside duties. He has repeatedly been re-elected to his position, and his name is synonymous with justice.

Probably no man is better known to the people, and the electors of this city than Judge David McAdam. He has demonstrated his popular strength by repeatedly running thousands ahead of his ticket on election day, but this popular strength does not constitute all his claim to consideration. He is conspicuous for his industry, his ready perception, his knowledge of case law, as well as fundamantal legal principles, for his quick and accurate conclusion and phenomenal despatch of public business; and still he finds time to write text-books for the profession and to lecture in the sacred interest of charity.

I regard Judge Gildersleeve as one of the best Equity Judges on the bench. On one occasion when he was a judge of the General Sessions, after he had delivered a charge to the Jury, the advocate for the accused stated in open Court, that the charge delivered should be printed in letters of gold and placed upon the walls of the court-house. As a criminal judge, he disdained to urge conviction; he sought only to discover the truth, and his great heart always throbbed to any appeal of humanity. The

great qualities which he evinced as a criminal magistrate shine resplendent in his performance of his duties as a civil judge, and as I have stated, he possesses in the highest degree that rare quality which constitutes a great equity judge.

Judge Truax is the nephew of the late Chauncey Shaffer, and was brought up in the office of that great advocate. He has now been fourteen years upon the bench, and during the greater part of that period has been assigned to duty in the Supreme Court. He is regarded as an excellent *nisi prius* judge, a man of hard common sense, and of very considerable learning. He is very literary in his tastes, and has one of the best selected private libraries in the country.

Judge Dugro, although a millionaire by inheritance, surrounded by every temptation to ease and indolence, is conspicuously energetic and industrious, and has devoted himself to his duties with an earnest desire to do justice between litigants. He is very popular with the bar and the people.

Of the City Court, it can be said, with truth, that it has preserved the high standard and repute which it enjoyed when Judge McAdam left that tribunal to take his seat upon the bench of the Superior Court, and some of the opinions written by the judges of this court are regarded by the profession as among the ablest contributed by any court in the land.

A great deal of malicious comment has been indulged in with reference to our Police and Civil Justices' Courts, but, I doubt that any city of the Union of the comparative size of the Metropolis, in its system of courts of inferior jurisdiction, presents an abler or more honorable body of men than those who sit upon the police bench and in the Civil Justices' Courts of our city.

Upon the Police Court bench, we have as lawyers, Grady, Feitner, Koch and Simms, who earned reputation and a sound and positive success at the bar. Others of the court, I believe, are taken from the ranks of the laity, but they are, without exception, men who understand the wants of the people, who can discriminate between the felonious and the unfortunate, and whose habits and experience of life enable them to deal justly and impartially with the important matters of business that come before them.

Judge Hogan, while not an educated lawyer, has been for a great many years upon the Police Court bench, and by his experience, intelligence and studious habits, has made himself familiar with the criminal law, and to such an extent, that it has excited the astonishment of lawyers.

In regard to the Civil Justices' Courts, it can be truly said that the majority of them are presided over by men bred to the legal profession, who have been successful at the bar, and who are in every way competent to discharge the duties of their position.

The Court of General Sessions is the greater criminal tribunal of the City of New York.

Recorder Smyth is a famous character throughout the country. Before his elevation to the bench, he was a successful practitioner at the bar, and until the death of that gentleman was a partner of the late John McKeon, one of the ablest and most upright lawyers ever called to our bar. The remarkable fact exists that in all his years of service, Recorder Smyth was never reversed but once in the Court of Appeals, and in order to arrive at this reversal, that tribunal was compelled to reverse itself. It was stated by a citizen of New York on one occasion that Recorder Smyth and Inspector Byrnes had done more to make New York a law-abiding city than all the other legal and moral forces put together. While this may have been an expression of enthusiam, still it indicates the high regard in which Recorder Smyth is held by the community in which he lives. It is absolutely impossible for a guilty man tried before this judge to escape. An innocent man has every opportunity to do so; and, still, I doubt that the high character, the influence, experience, learning and ability of this jurist ought to be invoked either on one side or the other.

The law provides a public prosecutor, and in this county, as a rule, we have been served in that capacity by some of our ablest citizens. I think the battle between the People and the Respondent should be fought by the lawyers, because the slightest intimation from such a man as Smyth, either in utterance or ruling, that the accused is guilty, is sufficient to annihilate his chance and hope of acquittal.

Recorder Smyth has a warm heart, a generous nature, and invariably extends clemency to a convicted person when it appears that he is not an habitual criminal.

Judge Cowing, although a Republican in politics, received the unanimous endorsements of both parties for re-election, and entered upon his second term of office without a dissenting voice. He is known everywhere for his humanity, his sympathy with the unfortunate, for his intelligence and accurate knowledge of law.

Judge Fitzgerald was formerly an assistant district attorney and a public prosecutor of the county, and it is remarkable that he has left behind him the arts and persuasion of the public prosecutor. He sits only as the judge.

Judge Martine is a member of a very old New York family of high social distinction, and was former district attorney of this county. It was during his administration that the "Boodle Aldermen" were prosecuted, convicted and sent to prison, after a series of remarkable legal struggles. From the District Attorney's Office he was elevated to the bench of the Court of General Sessions, and has served some six or eight years as Judge of that tribunal. He has a son, Randolph B. Martine, Jr., who is now an assistant of the District Attorney of the county. This young man is said to be of great promise.

The public prosecutor of the county is John R. Fellows, a man of the first order of ability, and the most powerful advocate I ever heard in summing up a case for the prosecution. I believe many innocent men even, unconsciously to himself, however, have been made the victims of his power. I repeat, that as a public prosecutor, I have never seen or met his equal. He is greatly dreaded by the bar who may have business in the criminal courts, and he is assisted by a group of very able and accomplished men, all of whom have individually won laurels in the prosecution of offenders.

William H. Clark is at the head of the Law Department of the City of New York. He is counsel to the corporation. Of him it is sufficient to say that he has saved the City of New York during the administration of his office millions of dollars in litigated cases alone. He is regarded as a very safe and able consulting counsel.

George M. Curtis.